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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 ROHAN RAMCHANDANI,

4 Plaintiff,

New York, N.Y.

5 v.

19 Civ. 9124 (VM)

6 CITIBANK NATIONAL ASSOCIATION,
7 *et al.*,

8 Defendants.

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Remote Conference

June 13, 2022

2:00 p.m.

11 Before:

12 HON. STEWART D. AARON,

13 Magistrate Judge

14
15 APPEARANCES

17 GARY H. GREENBERG

18 Attorney for Plaintiff

19 SALTO SORENSON LURIE, LLP

Attorneys for Plaintiff

20 BY: DAVID R. LURIE

21 GOODWIN PROCTER, LLP

22 Attorneys for Defendants

23 BY: MARSHALL H. FISHMAN

LINDSAY E. HOYLE

24 SAMUEL J. RUBIN

WILLIAM J. HARRINGTON

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1 THE COURT: Good afternoon. This is Magistrate
2 Judge Aaron.

3 This is the matter Ramchandani v. Citibank National
4 Association, 19 Civ. 9124. I would like to please have the
5 parties identify themselves for the record, starting with
6 counsel for the plaintiff.

7 MR. LURIE: David Lurie for the plaintiff.

8 MR. GREENBERG: And this is Gary Greenberg for the
9 plaintiff.

10 MR. FISHMAN: Marshall Fishman, from Goodwin Procter,
11 for the Citi defendants, and with me are Samuel Rubin, William
12 Harrington, and Lindsay Hoyle from Goodwin Procter.

13 THE COURT: Good afternoon.

14 What we are going to be addressing in this conference
15 are a couple of things. One, the letter motion that was filed
16 by the plaintiff, it originally had been filed at ECF 95 and
17 the Clerk's Office bounced that due to a filing error. The
18 letter motion was refiled at ECF 100. There is also the letter
19 motion to seal that I will be granting. In addition, I had
20 issued an order to show cause on June 4, at ECF 102, which the
21 parties have made submissions about.

22 The way that I want to proceed is I have some
23 questions about specific *in camera* documents, and obviously
24 since folks are at their computers I am hoping that the Goodwin
25 lawyers can pull these up as we go, and then I am going to give

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1 the parties an opportunity to make whatever remarks they wish
2 to make about the motions pending before the Court.

3 The first issue I have, the first thing I want to
4 discuss is document no. 3, and this is from appendix A. These
5 were the documents that were selected by the plaintiff for *in*
6 *camera* review. And what I am focusing on in document no. 3,
7 which is the very first e-mail in the chain, and it's an e-mail
8 sent from Jeffrey French on Tuesday, and given -- it says
9 15/10/2013, which I assume means October 15, 2013, and it's
10 basically forwarding a *Wall Street Journal* article.

11 I assume Citi isn't -- I guess it's a question. Is
12 Citi seeking to argue that that -- I'm not talking about the
13 e-mail that's earlier in the chain but, rather, I am talking
14 about the most recent e-mail, the one that was sent at 8:59:46
15 a.m. is Citi taking the position that that e-mail is
16 privileged?

17 MR. RUBIN: Judge, this is Sam Rubin for the
18 defendant.

19 I am trying to pull up the exact document that your
20 Honor referenced right now. But my understanding is that with
21 those types of documents, based on what you described, we
22 produced the forwarding of the news article portion but
23 redacted out the lower portion of the chain. And I am trying
24 to pull up the one I think you referenced, no. 3, which is the
25 October 14, 2013, 16:22 portion of it I believe is the portion

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1 that's redacted. I'm trying to pull up the image. But we
2 would be able to confirm that and identify by Bates number the
3 redacted portion where the news article itself is produced but
4 the privileged discussion below it is not.

5 THE COURT: Okay. So in some of the documents that
6 you have provided to me for *in camera* review, you gave me the
7 unredacted and redacted. This one, it was just this document,
8 which indicates to me that the document was withheld in toto.
9 To the extent that this particular e-mail was produced
10 elsewhere, that is not transparent to me, so I am just going to
11 be ruling that this document no. 3 should be -- that e-mail
12 should be unredacted.

13 MR. RUBIN: Understood, your Honor. I believe it has
14 been produced, but we will reproduce it consistent with that
15 order. Thank you, your Honor.

16 THE COURT: All right. My next is document no. 14,
17 and what that is is an individual named Paul Ferguson on
18 October 31, 2013, sends an e-mail to Rohan Ramchandani, and
19 then I think realizes that -- and it is marked "FX
20 Investigations Privileged and Confidential." I believe there
21 is another individual who has the name Rohan, and what's
22 happened here is that this individual inadvertently sent the
23 e-mail to the plaintiff himself.

24 And my question for you is, is Citi seeking to assert
25 privilege over that Ferguson to Ramchandani October 31, 2013?

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1 It is document no. 14. It is the third to last e-mail in the
2 chain. There are other ones that come before it that
3 Mr. Ramchandani, assuming he received this e-mail, would have
4 seen. I am not suggesting that the later two e-mails, which
5 appear to be sent to lawyers, are producible, but I want to
6 hear Citi's position on the e-mail that was sent to Ramchandani
7 himself.

8 MR. RUBIN: Our position is that that is privileged.
9 It was -- as your Honor has identified, there was an
10 inadvertent -- not a production during discovery, but an
11 inadvertent transmission contemporaneously, because the general
12 counsel of Citigroup also had the name -- at the time had the
13 name Rohan, and this was inadvertently sent to Rohan
14 Ramchandani when it was intended for Rohan Weerasinghe, the
15 general counsel of Citigroup.

16 It was, to my understanding, also I believe
17 technologically clawed back. I don't believe the transmission
18 ever made its way entirely to Mr. Ramchandani, so I don't
19 believe the information was disseminated. But in any event, it
20 was an inadvertent disclosure and, yes, we are asserting
21 privilege over it.

22 (Court reporter confers)

23 THE COURT: For the sake of the court reporter if
24 everyone could please identify themselves before they speak
25 each time that would be helpful.

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1 So, Mr. Rubin, what I am going to be ruling on this
2 is, I am going to give you a week to set forth what your
3 position is and then I am going to give plaintiff an
4 opportunity to respond to it. I obviously understand what you
5 are saying, but the reason I am giving plaintiff an opportunity
6 to respond is perhaps his client will indicate that he received
7 this e-mail and somehow relied on -- I don't know what he will
8 claim, but I want to give him the opportunity to take a
9 position.

10 And just so plaintiff's counsel is aware, I am
11 obviously not going to disclose its contents just because I may
12 in fact find that it is properly privileged. It was an e-mail
13 sent on October 31, 2013, at 2:10 p.m., from Paul Ferguson to
14 Mr. Ramchandani, with the subject "FX Investigations Privileged
15 and Confidential."

16 All right. I'm now going to move on to document no.
17 16. I assume that the explanation that was given with respect
18 to document 3 would apply to this as well. It's essentially
19 that same *Wall Street Journal* article that's being forwarded in
20 the first two e-mails in this chain, once by Mr. French and
21 once by Mr. Forese. So I am going to order that those two
22 e-mails in the chain be unredacted.

23 And by the way, all of this is going to be in an order
24 that I issue, so you don't need to be -- obviously feel free to
25 take whatever notes you wish to take, but the order that I

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1 issue will have this in there in addition to my legal analysis.

2 The last two documents I want to address before I turn
3 the floor over to the parties, document no. 35 contains --
4 there is one e-mail at the top where merely something is being
5 forwarded without any content. That, to me, obviously, isn't
6 privileged. But the earlier ones in the chain—and these are
7 from June 10 and June 11 of 2013—this doesn't appear to be
8 inadvertent. Mr. French is forwarding a Bloomberg story about
9 front-running around the WMR FX rate, and he is sending it to a
10 number of individuals, including Rohan Ramchandani. So
11 obviously I am happy to hear if Citi wishes to take the
12 position that it is privileged, but I think that this likely
13 was listed as privilege without seeing that Mr. Ramchandani was
14 a recipient.

15 MR. GREENBERG: Judge, I want to think about this a
16 little further, but my understanding was that this is at a time
17 when Mr. Ramchandani was still employed at the company, and
18 this was an e-mail that was being sent by Mr. French, who is in
19 the press communications department, to a number of business
20 individuals, including Mr. Ramchandani, who was still employed
21 at the company at the time, as well as a number of folks in
22 legal. So I don't think it is the same situation before, but I
23 don't necessarily think it destroys the privilege merely
24 because Mr. Ramchandani was on it at the time.

25 THE COURT: Well, you can't keep secret -- although it

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1 may very well be if Citi were to be involved in litigation
2 with, I will call it, party X, that Citi could claim privilege
3 against party X. But you can't claim privilege against Rohan
4 Ramchandani if Rohan Ramchandani, as you admit, was a recipient
5 of the document. I will give you an opportunity -- I will put
6 this in the same bucket, for lack of a better term, as document
7 14 and give you an opportunity. Obviously what I would
8 strongly suggest you do is accede to my analysis, but I will
9 give you an opportunity to address why you think this document
10 should be kept confidential from Mr. Ramchandani himself in
11 circumstances where he was a recipient of it.

12 MR. LURIE: Your Honor --

13 MR. GREENBERG: There -- David, just let me finish. I
14 just want to mention --

15 MR. LURIE: Okay.

16 MR. GREENBERG: -- I believe the lowest e-mail in the
17 chain, on the June 10, 2013, 16:37 e-mail, your Honor, has been
18 produced at a different Bates number, but we will confirm that
19 as well, your Honor, and appreciate the opportunity to be able
20 to respond, and we may not need to respond on this one, but
21 thank you.

22 THE COURT: All right. Was that Mr. Greenberg or
23 Mr. Lurie?

24 MR. LURIE: David Lurie, your Honor. I just wanted to
25 add a query, and that is Citi -- I think we are entitled to

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1 know whether Citi has withheld other documents that were sent
2 to Mr. Ramchandani, because that really came as quite a
3 surprise to me, and I would object to withholding of any
4 documents that were sent to him while he was at Citibank.

5 THE COURT: So this will not be -- because I am
6 putting the finishing touches on my opinion and order, this
7 will not be addressed -- this point will not be addressed in my
8 opinion and order. But the parties are ordered to order a copy
9 of this transcript and split the cost, and I am ordering
10 Citibank to disclose to plaintiff whether or not there are
11 other documents to which Mr. Ramchandani was a party that have
12 been withheld on privilege grounds and you should meet and
13 confer after those are identified, if any, and any disputes
14 obviously can be brought to me.

15 There is another document that actually falls within
16 this bucket, but what's different about this document, it's
17 document 42, is the first e-mail in the chain is actually from
18 Mr. Ramchandani himself. On January 15, he sent an e-mail that
19 is -- the subject of which is "A Few Questions" and that -- let
20 me ask. Is Citi claiming privilege as to e-mails sent by the
21 plaintiff himself?

22 MR. RUBIN: Your Honor, I do not believe that we are.
23 I think this is another circumstance where the lower e-mail in
24 the thread I believe has been produced or we would be
25 producing; and the top e-mail, which is the one where it is

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1 forwarded to legal counsel, Ms. Nelson is an in-house attorney
2 in the -- at Citi, is what was intended to be withheld here.

3 THE COURT: Yes. My ruling on this one is going to be
4 that I am just ordering that that bottom e-mail be unredacted
5 and produced.

6 MR. RUBIN: Understood, your Honor. It may already
7 have been, but I would need to double check that.

8 THE COURT: Again, all I can go by is I was given
9 documents to review for *in camera* review, and this one was not
10 indicated that it was redacted. This one was merely withheld.

11 MR. RUBIN: Understood, your Honor.

12 THE COURT: Okay. All right. So that is all that I
13 had. Let me turn the floor over. And by the way, I assure you
14 I carefully read everything, the parties' submissions, the *in*
15 *camera* submissions, so you do not need to repeat yourselves.
16 But I wanted to give both sides an opportunity to highlight
17 anything they wanted to highlight or make any remarks that they
18 wish to make. So I am going to start by turning the floor over
19 to plaintiff's counsel.

20 MR. LURIE: Thank you, your Honor. This is David
21 Lurie, and my colleague Gary Greenberg will be addressing the
22 employment-related documents, but I am going to first address,
23 with the Court's permission, the notes and memoranda related to
24 meetings with the government, the government and Citibank.

25 I understand you have carefully reviewed the

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1 correspondence and my first purpose here would be to address
2 any questions that you might have. But in the absence of any
3 questions that you have at the moment, I would like to
4 highlight one point that has become clear as a through line,
5 through all of the letter briefs, including the letter briefs
6 about the annotated chats, communications, and that is, that
7 Citibank is determined to withhold documents that reflect the
8 actual statements that were made by Citibank on the one hand
9 and DOJ on the other hand in its meetings. Those statements
10 are, for all the reasons set forth in our letter briefs and
11 also all the reasons stated in Judge Marrero's opinions, highly
12 probative. As we have stated, the argument that those
13 materials, that is, accounts of what was said by the parties in
14 the meetings, are opinion work product are exceedingly weak for
15 the reasons that Judge Wood has explained.

16 But beyond that, Citibank has expressly not only
17 waived any claims of confidentiality with respect to those
18 materials, but they entered into an agreement to disclose
19 their -- the content of their records of what was said during
20 those meetings. So the claim that Citibank is advancing that
21 it can withhold from the Court and from their adversaries, from
22 plaintiff, written records of what was said during these
23 meetings simply doesn't hold water, and the materials are
24 highly probative.

25 So that is the sum and substance of what we are

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1 seeking. The notes of the meetings and to the extent that
2 these annotated chats do in fact reflect what was said by
3 Citibank's lawyers during the meetings that they held with the
4 government, for the same reason, our position is that they
5 should be disclosed. One could debate whether any opinion work
6 product component of those documents was withheld, but we are
7 not seeking opinion work product if it does exist, if it is in
8 the materials. We are simply seeking the portions of the
9 documents that reflect what was said by the parties during the
10 meetings, and that is the sum and substance of our position on
11 this.

12 One additional point is that there has been a
13 suggestion that Citibank entered into a no-waiver agreement
14 with Mr. Ramchandani's lawyers in the OCC proceeding in which
15 the Citi's lawyer Mr. Kolodner provided a proffer. That is
16 simply not the case. The agreement was attached to
17 Mr. Kolodner's declaration. We previously provided it to the
18 Court in connection with our earlier correspondence, and there
19 was no such agreement. Citibank didn't seek it and
20 Mr. Ramchandani's counsel in the OCC proceeding certainly
21 didn't agree to it.

22 The issue in that case was a simple one.
23 Mr. Ramchandani's counsel had subpoenaed a number of Citi
24 witnesses, including its outside counsel and in-house counsel,
25 for testimony. Citibank preferred to be able to avoid having

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1 those witnesses testify. They had a lot of reasons to want to
2 avoid their testimony, including because this case was pending
3 in the Southern District and they certainly knew they were
4 likely to be subpoenaed here, and they entered into a
5 strategically informed decision to make Mr. Kolodner available
6 for a proffer session. But in no way did Mr. Ramchandani agree
7 that that would work as a -- that would constitute a no-waiver
8 agreement.

9 Unless the Court has any questions, I think I will
10 turn the floor over to Mr. Greenberg to address the employment
11 issues, employment documents.

12 MR. GREENBERG: May I proceed, Judge?

13 THE COURT: I don't have any questions, so go ahead,
14 Mr. Greenberg.

15 MR. GREENBERG: Okay. Madam Reporter, this is Gary
16 Greenberg speaking now.

17 I wanted to address the issue of documents concerning
18 the facts and circumstances underlying Citi's decision to
19 suspend and then terminate Mr. Ramchandani.

20 THE COURT: Sorry. This is Judge Aaron. Apologies
21 for doing this to you, but in order for me to keep the
22 arguments straight and fresh in my mind, what I would like to
23 do is ask Citi to respond to what Mr. Lurie just said and then,
24 Mr. Greenberg, I will let you start over. Okay? Apologies for
25 that, but just in case Citi raises things about what Mr. Lurie

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1 just said, I want to make sure I have everything fresh in my
2 mind.

3 MR. GREENBERG: No problem, your Honor.

4 THE COURT: So let me hear from Citi with respect to
5 just the issues that Mr. Lurie discussed.

6 MR. FISHMAN: Thank you, your Honor. Marshall Fishman
7 for the Citi defendants.

8 What we are talking about with respect to Cleary's
9 notes are the notes of criminal defense counsel, which deserves
10 heightened standard of protection. Okay? They have failed to
11 meet their burden to show both substantial need and without
12 undue hardship that they can obtain substantial equivalent
13 otherwise. They cannot. Because here we produced or the DOJ
14 produced, and your Honor has them, the detailed notes of the
15 June 11 meeting. DOJ notes are 11 pages. They go chat by
16 chat. That is in fact the best recording of Cleary's
17 presentation, the best recording of what was important to the
18 DOJ, which is at the heart of plaintiff's claim that Citi
19 somehow misled DOJ to bring a criminal antitrust case.

20 The DOJ also gave testimony on their notes of the June
21 11 meeting, detailed testimony on these notes. We don't hear
22 anything about that. As we know, the plaintiff elected not to
23 ask the DOJ a single question. This is much like the *Arias*
24 case where government notes were available and the Court held
25 that interview memoranda, then, were not since—without undue

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1 hardship and there was no substantial need—they used the
2 government notes in that case. Very similar situation.

3 Moreover, the DOJ notes are completely consistent with
4 the stipulation that Mr. Ramchandani himself entered into as to
5 what was said at these meetings. The first ten pages of that
6 stipulation are dedicated to the June 11, 2014, meeting. And
7 again, to remind the Court, Mr. Ramchandani's counsel declined
8 to ask the DOJ a single question. And we know, by the way,
9 that the DOJ did not rely upon what Citi said before the grand
10 jury since Citi indisputably did not testify before the grand
11 jury, did not decode the chats, and Citi did not decode the
12 chats at trial. So the whole argument is really a red herring.

13 But we have the actual notes of the Department of
14 Justice which set out in detail what was said, what was
15 important to the DOJ, and what the chats meant. We have those.
16 You don't hear anything from plaintiff's counsel about those
17 because they can't meet a standard and the burden to show
18 substantial need and without undue hardship.

19 There is no waiver here also with respect to the OCC
20 stipulation. We have a detailed declaration, which is
21 un rebutted, from Mr. Kolodner, and he says in that declaration
22 that plaintiff specifically agreed not to seek Cleary's memos
23 or notes or other privileged materials in exchange for Cleary's
24 proffer. Again, this is un rebutted. There is no declaration
25 from Ramchandani's counsel who handled that stipulation. It is

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1 only speculation as to what went into Cleary preparing that
2 declaration. Indeed, the declaration was given explicitly
3 contingent upon Ramchandani's agreement not to seek production
4 of Cleary's work product, notes, or memos, and that's Kolodner
5 declaration at paragraph 11.

6 So there is no basis here for a finding that there is
7 substantial need and that without undue hardship the plaintiff
8 can't by equivalent means obtain the information that's in
9 Cleary's work product memorandum. The notes and memoranda,
10 including the annotated chats, are work product of criminal
11 defense counsel that get a heightened standard, and indeed the
12 annotations that the judge has seen, your Honor has seen, are
13 not factual, they are not based on a witness interview. They
14 are based on thoughts, impressions, and argument anticipating
15 what the government was going to say and also what Cleary was
16 going to say. They were not verbatim transcripts, and there
17 has, again, been no showing that there has been any waiver
18 whatsoever, particularly here where there is a confidentiality
19 agreement between Cleary and the Department of Justice. So
20 unlike the *Terra Nova* case that your Honor had cited in the
21 order to show cause, here we have a confidentiality agreement
22 which should protect any allegation of waiver.

23 Thank you.

24 THE COURT: All right. Mr. Lurie, I am not soliciting
25 any further comments, but I will give you an opportunity to

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1 make --

2 MR. LURIE: Thank you.

3 THE COURT: -- you would like to make.

4 MR. LURIE: Thank you very much, your Honor, and I
5 would like to respond.

6 First of all, as Judge -- as to the relevance and need
7 of these documents, we have made the showing and the showing
8 was made simply based on our complaint and Judge Marrero's
9 ruling. What was said in those meetings goes to the heart of
10 the case. And as Judge Wood recognized, getting one set of
11 notes is not a substitute for others.

12 Now, if -- and let's look at what exists right now.
13 There are the DOJ notes, and we will definitely be using them
14 in this case, and there is Mr. Kolodner's -- the summary of
15 Mr. Kolodner's proffer. Now, plaintiff's current position is
16 that we cannot use that proffer in this case. Now the script
17 has been flipped and we are told that the proffer documents,
18 the stipulation not only can be used, we are now hearing that
19 it is an argument for why we can't get the notes.

20 That raises an interesting question, and that is, will
21 Citi stipulate to the accuracy of the DOJ's statements about
22 what occurred during these meetings and communications? Will
23 Citi stipulate that all the DOJ's notes are accurate and
24 complete accounts of the meetings at issue? Will Citi
25 stipulate that the government's account, given in its

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1 sentencing memo in the DOJ's case against Citibank, which we
2 cite and rely upon and the Court cited and relied upon in its
3 motion denying Citi's motion to dismiss, will they stipulate
4 that the government's account of what Citi said and did in each
5 one of these meetings is accurate and complete? Because if
6 they do so stipulate, again, stipulate that the sentencing memo
7 is accurate and complete, stipulate that the notes are accurate
8 and complete and will not be derogated or challenged by Citi,
9 stipulate that the account of Mr. Kolodner's proffer, given in
10 the OCC case can be admitted in this case and will not be
11 challenged that its accuracy will be stipulated to by Citi,
12 then maybe we can forego getting these notes.

13 So in the absence of such a stipulation, Citi's
14 contention that it can choose to withhold the notes on which
15 Mr. Kolodner based his proffer session simply doesn't hold
16 water. Yes, we will be using the DOJ notes, but that doesn't
17 mean that we shouldn't be entitled to the documents that formed
18 the basis for Mr. Kolodner's statements and that are about the
19 issues that are at the heart of the parties' dispute, what Citi
20 did and didn't say about Mr. Ramchandani's conduct, did and
21 didn't say.

22 THE COURT: Mr. Lurie, I will let you continue. I
23 want to remind you, and I am sure you recall, because it was a
24 contested issue, Citi had opposed your ability to use the OCC
25 stipulation of examined witnesses during discovery and I had

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1 given you leave in a written order that hasn't been appealed to
2 use that document in questioning -- in the course of discovery.
3 I did reserve because it isn't my -- I am staying in my lane,
4 for lack of a better term, I'm leaving it --

5 MR. LURIE: Right.

6 THE COURT: -- up to Judge Marrero as to the issue of
7 admissibility. But you are free to use the OCC stip, as you
8 know, in discovery in this case.

9 MR. LURIE: No, I understand that, your Honor, and I
10 appreciate it. But with respect, I am making a different
11 point, right? It remains Citi's legal position, so far as I
12 know, that we cannot use the stipulation, for example, in
13 summary judgment or at trial, and Citibank certainly has not
14 stipulated, again, that that is an accurate and complete
15 account of what Mr. Kolodner said. And Citi has not stipulated
16 that it will not challenge the accuracy and completeness of the
17 account that the DOJ provided, not only of the meeting that was
18 just referenced, which was very important, the June 24 meeting
19 in which, contrary to statements Citibank has made in the past,
20 it decoded Mr. Ramchandani -- or purported to decode, that is,
21 explain the meaning of Mr. Ramchandani's chat in detail to the
22 government, but there are other --

23 MR. FISHMAN: Judge, this is --

24 MR. LURIE: If I may finish? If I may finish,
25 Marshall? May I finish, Marshall?

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1 There are other meetings in which there are notes that
2 have been provided by the government. And again, if Citi is
3 willing to stipulate to the accuracy of the government's
4 account in its various notes, then maybe this, maybe this
5 dispute can be resolved without further ruling from the Court.

6 I'm done. I didn't want mean to interrupt you,
7 Mr. Fishman, but I wanted to make my issue clear.

8 MR. FISHMAN: Your Honor, Marshall Fishman. May I
9 respond very briefly?

10 THE COURT: Yes.

11 MR. FISHMAN: Just to clarify, Citi is not opposed and
12 did not oppose on the merits utilizing the OCC stipulation. We
13 were concerned that there was a protective order in place and
14 we were asking for guidance and a representation that the OCC
15 stipulation could be used in this case because it was not clear
16 to us that it could. But we have no beef with using it as long
17 as confidentiality provisions are adhered to. We used it at
18 length with Mr. Ramchandani at his deposition, so we have no
19 issue with that, and I just wanted to clarify the record.

20 In terms of Mr. Lurie proposing a stipulation, this is
21 the first that we are hearing of it. We would be happy to look
22 at and perhaps something can be worked through in terms of a
23 written stipulation that would obviate any need to go further
24 on considering any production of Cleary's work product. But we
25 would be happy to look at a proposed stipulation. This is the

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1 first we are hearing of this.

2 MR. LURIE: Well, it is something that I am raising
3 for the first time because of the questions the Court has
4 raised and that you have raised, Mr. Fishman.

5 But to turn back to the issue, unless Citi is willing
6 to enter into such a stipulation regarding all of the
7 government's statements and not just the notes, but also the
8 government's representations to the Court in which it explained
9 what role Citi played in quote/unquote decoding
10 Mr. Ramchandani's chats, unless Citi is willing to stipulate to
11 the accuracy of the government's account, we need to see Citi's
12 notes in order to determine what was and wasn't said in these
13 meetings.

14 Now, as to -- there are -- there are a couple of other
15 things.

16 MR. FISHMAN: May I? May I respond to that briefly?
17 It is Marshall Fishman.

18 THE COURT: Okay.

19 MR. LURIE: Well --

20 MR. FISHMAN: And that is we are putting the cart
21 before the horse. If there is a stipulation to be proposed
22 here, let's see that stipulation. It very well may be that we
23 can stipulate to all or most of the dispute here. Let's see
24 it, and we can then again obviate the need for your Honor's
25 ruling on work product documents, again --

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1 MR. LURIE: Well --

2 (Indiscernible crosstalk)

3 MR. FISHMAN: And let's see that stipulation. Your
4 Honor, I would ask your Honor to direct Mr. Lurie to prepare
5 that stipulation, get it over to us, we will look at it ASAP
6 tomorrow, and it may be that we can be done with some of this
7 dispute, if not all of them.

8 MR. LURIE: Well, okay, well, the stipulation will be
9 very simple. It will be that the -- that Citibank will not
10 challenge the accuracy or completeness of any representations
11 made by the DOJ in their notes or court filings regarding --

12 MR. FISHMAN: Your Honor, if Mr. Lurie can get us that
13 stipulation tonight, we will review it and we will review it
14 with our client tonight or tomorrow morning and we would hope
15 to get it back to the Court if it's that simple.

16 MR. LURIE: Okay.

17 THE COURT: I am ready to issue my ruling, so if you
18 folks want to work it out, my fear is tomorrow you are going to
19 get back to me and say we need a little more time and then I am
20 going to be asked to extend the discovery guidelines, which I
21 am loath to do. But if you want me to give you a brief period
22 of time to try to work it out, I will do that, but reluctantly
23 I might add.

24 MR. LURIE: I am happy to provide the stipulation
25 draft to my opposing counsel.

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1 THE COURT: Okay. When are you going to give them the
2 draft?

3 MR. LURIE: By 9 a.m. tomorrow, your Honor.

4 THE COURT: Okay. And when are the parties going to
5 tell me whether they are going to agree to it or not? Tomorrow
6 close of business?

7 MR. FISHMAN: Your Honor, this is Marshall Fishman.
8 We will make every effort to do that. We do have clients to
9 speak to about whatever the stipulation says, and we will do
10 everything we can to get it to the Court by close of business
11 tomorrow if we get Mr. Lurie's stip by 9 a.m. tomorrow morning.

12 THE COURT: Okay. So that deals with the issue of
13 the -- and, by the way, does this deal with the issue of both
14 the memoranda and the annotated chats or is this just the
15 memoranda? In other words, Cleary's memoranda about the
16 meetings, is that what this stip is about or does it also
17 include the annotated chats?

18 MR. LURIE: It would be both, your Honor.

19 THE COURT: That was Mr. Lurie speaking?

20 MR. LURIE: Correct. That was David Lurie speaking.

21 THE COURT: All right. So you need to file a letter
22 to the ECF docket by tomorrow at 5:00 indicating whether there
23 is a deal with respect to the Cleary memoranda and the Cleary
24 annotated chats. And if there is a deal, I obviously will not
25 rule on that issue because you will have a deal. It is going

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1 to cause me major *agita* because I need to rework this document
2 which deals in substantial part with that, but I will deal with
3 it. So what you may get is a very shortened thing that just
4 gives my rulings with respect to the other issues which we are
5 about to discuss. But I guess I have to deal with that issue,
6 you don't.

7 So let's turn to the other issues, please. So
8 Mr. Greenberg were you going to be speaking about -- why don't
9 you pick up where you had -- why don't you just start over on
10 your part, Mr. Greenberg.

11 MR. GREENBERG: Okay. Thank you, your Honor.

12 It's Gary Greenberg, Madam Reporter.

13 Yes. I want to address the issue about documents
14 relating to Citi's -- the facts and circumstances underlying
15 Citi's decision to suspend and then terminate Mr. Ramchandani.
16 As Judge Marrero understood in denying Citi's motion to
17 dismiss, those documents are very significant to plaintiff's
18 theory that Citi made Mr. Ramchandani a scapegoat. So we
19 requested those documents, and Citi in fact agreed to produce
20 them. And when it started making its rolling production, I
21 looked through the documents produced and I could not find
22 documents relating to that issue. I'm not talking about a
23 letter to -- or an e-mail to Mr. Ramchandani announcing he was
24 suspended or a letter -- or a press release saying that he had
25 been suspended. I am talking about the decision-making

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1 process, and I couldn't find any. I raised it with Citi. They
2 said two things. One, either -- well, just wait and see, it's
3 coming; or it's in there, just keep looking you will find it.

4 Finally on March 15 we filed a letter motion, that's
5 ECF 60, and we said those documents are relevant, they are
6 material, we haven't gotten them, and we need them. Now Citi's
7 response on March 18, that's ECF 61, is really important, so I
8 am going to quote it, and it is just a sentence. Here's what
9 Citi said in its response: "Citi has provided substantial
10 discovery on all issues concerning plaintiff's leave and
11 termination from employment at Citi."

12 Judge, at a minimum, that was a misleading statement
13 because they hadn't produced those documents. We produced a
14 statement from Citi's U.K. counsel that conceded that Citi had
15 withheld many documents, thousands of documents in the U.K.
16 proceeding because essentially of a blanket privilege. There
17 was an attorney present, then the document wasn't produced.
18 And so now it is three months later and we still don't have
19 those documents, those critical documents, but what we have is
20 a privilege log, and it looks to us from the privilege log,
21 although it's hard to tell, Judge, because it is so barebones,
22 that Citi is again asserting a blanket privilege. Just because
23 an attorney was present, the documents themselves don't have to
24 be produced.

25 I think Citi's failure to tell the Court three months

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1 ago that there were many such documents that were all being
2 withheld on the grounds of privilege and it said, misleading
3 the Court, that they had been produced, to me the Court would
4 be entitled to just say you waived the privilege, produce all
5 documents relating to the decision. But at a minimum, Judge,
6 they should be required to provide a detailed account of what
7 role its attorneys played in every stage of the discipline and
8 termination process and how it constituted legal advice so as
9 to permit Citi to assert a privilege over every document in
10 this category. So either they should all be produced or they
11 have to do a lot more to meet their burden of showing that they
12 are somehow privileged. That's all.

13 That's all I have, Judge.

14 THE COURT: Who is going to speak on behalf of Citi?

15 MR. FISHMAN: Yes. Marshall Fishman again, your
16 Honor.

17 There has never been a misrepresentation to the Court,
18 first off, as Mr. Greenberg has insinuated. Citi has produced
19 all nonprivileged documents concerning the termination. But I
20 would like to point out at the beginning that termination here
21 is a nonissue. Judge Marrero did not know because it was not
22 in the complaint that Ramchandani had commenced a U.K.
23 proceeding for wrongful termination. Nor did Judge Marrero
24 know that that action was dismissed based on findings that
25 Mr. Ramchandani's acts of misconduct were in breach of his

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1 employment contract and his foolish, blameworthy behavior in
2 the chats was a cause for termination. So that's sets the
3 stage here.

4 But in any event, Citi did produce hundreds of
5 documents concerning the termination of Mr. Ramchandani. Many
6 were withheld on privilege, as we have set forth. Documents
7 were re-reviewed by my firm in connection with the production,
8 and indeed we did find some documents that we did ultimately
9 produce based on privilege calls that had been made in the U.K.
10 So this was redone here in large part. Legal advice was given
11 concerning plaintiff's termination, where he started a wrongful
12 termination action merely two months after he was terminated in
13 January 2014, and given the ongoing multiple regulatory
14 proceedings that were happening, the investigation of the chat
15 room conduct and an analogy whether Mr. Ramchandani had
16 violated Citi policies led to the decision to terminate. And
17 there were lawyers involved in these termination discussions,
18 and privilege was properly invoked in the U.K. and its been
19 properly invoked here. And I can say that the nonprivileged
20 documents have been produced. They have been produced for a
21 while. And we keep hearing the same argument, and that's why
22 we gave you a detailed privilege log after first giving the
23 categorical log. So there is just no basis for further
24 discovery on this issue.

25 Thank you.

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1 MR. GREENBERG: Judge --

2 THE COURT: Anything else from you, Mr. Greenberg?

3 MR. GREENBERG: Yes, Judge, just a brief point.

4 I didn't say that Citi had misrepresented the fact. I
5 said that what they said was misleading. Even now, Mr. Fishman
6 says, well, we said that we have produced all documents that
7 were nonprivileged, but that's not what they wrote to you, your
8 Honor. What they said is we have provided substantial
9 discovery on all issues concerning plaintiff's leave and
10 termination from employment at Citi. If they had told the
11 Court and us three months ago that they were all being withheld
12 on privilege grounds, which he is now saying, we could have
13 litigated this issue three months ago and we could have had the
14 documents either produced or nonproduced and the case wouldn't
15 be delayed. We are still waiting for those documents, Judge.

16 That's all.

17 MR. FISHMAN: Your Honor, Marshall Fishman, if I
18 might.

19 THE COURT: Okay.

20 MR. FISHMAN: May I follow up? Yes. Again, many
21 documents have been produced that are not privileged on the
22 subject of Mr. Ramchandani's termination. There has not been
23 an assertion of a blanket privilege. There just has not.
24 Documents have been reviewed, analyzed, both in the U.K.
25 proceeding and here, and documents that we have determined that

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1 are not privileged have been produced.

2 MR. LURIE: If I might—this is Mr. Lurie—I just
3 wanted to address two points that Mr. Fishman made that are
4 inaccurate, and it is important for the Court to recognize
5 that.

6 First of all, U.K. counsel stated that virtually no
7 documents related to the process of deciding whether or not to
8 discipline or fire Mr. Ramchandani were produced. That remains
9 the case. We have asked Citi to identify even one document in
10 their production that relates to the decision-making process.
11 That's the way it was put in the U.K. lawyers' affidavit. They
12 haven't pointed us to any. I am aware of about two or three.
13 They simply haven't been produced.

14 And Mr. Fishman's suggestion that it is a nonissue is
15 simply not accurate. No, Mr. Ramchandani's case was not
16 dismissed by the U.K. Court and it is -- the Court can read the
17 decision and reach your own conclusions, but that is a
18 mischaracterization of that decision. And it is not a reason
19 for Citibank to withhold these documents or to give -- cut them
20 any slack regarding their decision to withhold virtually all of
21 them.

22 THE COURT: All right. I think there is one other
23 category. I didn't know whether plaintiff wanted to address
24 those or not. That is the press-related documents.

25 MR. LURIE: Yes, your Honor. This is David Lurie

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1 speaking.

2 If I may, on those documents, now, again, these are a
3 category of documents that, like the materials related to
4 Mr. Ramchandani's dismissal, and in fact some of them do relate
5 to Mr. Ramchandani's dismissal, that Judge Marrero recognized
6 are highly probative and relevant in this case and they are
7 probative because -- and I do want to address only for one
8 minute the factual background, because it is highly relevant
9 because when he was fired, Mr. Ramchandani was expressly
10 instructed not to speak to the press because there were ongoing
11 government investigations, and Citibank's HR department told
12 him that he should not speak to the press and that Citi would
13 not be speaking to the press. But in fact, and this is
14 detailed in our complaint based on the few documents we have
15 received on this, and we received them through the equivalent
16 of a FOIA request in the U.K. Citibank's PR department, and
17 specifically Ms. Apsilos and Mr. French—so those are some
18 names with which you are familiar your Honor—embarked on what
19 they called a no-fingerprints plan to get material into the
20 press about Mr. Ramchandani's firing, and specifically to
21 identify him as a wrongdoer and as the sole wrongdoer at
22 Citibank. That story, that no-fingerprint story is at the
23 heart of the parties' dispute because it is the very same claim
24 that Citibank made to the government in connection with the
25 investigation that ultimately led to Citibank's guilty plea,

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1 that is, that Mr. Ramchandani was a wrongdoer and he was the
2 sole wrongdoer.

3 Now, Citibank's claim is that the materials that they
4 have withheld—and there are many of them—were withheld
5 because they reflected communications between Citibank's
6 counsel on the one hand and the PR people instructing them not
7 to communicate with the press about the subject matter of the
8 then ongoing government investigation, and that is in
9 Citibank's June 1 submission to the Court, that is, that these
10 were communications about Citibank putting the kabash on the PR
11 people and telling them not to go to the press and speak to
12 them about the subject of the government investigations. We
13 know not only were the PR people speaking about the government
14 investigations, they did so repeatedly, over a multiyear
15 process, and they did so by means of talking points that they
16 shared with the lawyers. So the proposition that these
17 communications were for a strictly legal purpose of telling the
18 PR people not to speak to the press, it is not only not
19 credible, it is just not true. And as your Honor identified --
20 stated in a telephonic conference we had two months ago and as
21 the precedents recite, if there is a nonlegal purpose for
22 communications with PR people, including in-house PR people,
23 specifically as one Court put it, to burnish the reputation of
24 the corporate defendant and potentially tarnish the reputation
25 of other parties, then we are in the heart of a nonlegal

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1 purpose for the communications, and that is in fact what was
2 going on here based on the information that we had, that is,
3 that the Citibank communications were part of this effort to
4 get this information out to the press.

5 And I want to -- one time period that is highly
6 relevant is the time period we were dealing with a few minutes
7 ago, the time period of Mr. Ramchandani's firing. Because,
8 again, Citibank's PR people -- human resources people told
9 Mr. Ramchandani don't speak to the press. They then went out
10 to the press, they were identified as the source of the
11 information in a press report. And then that caused a lot of
12 *agita* at Citibank because Mr. Ramchandani's former boss was
13 upset because he is the one who had told Mr. Ramchandani that
14 you shouldn't be speaking to the press and Citibank wouldn't.
15 And he felt that he had been used as a mechanism for
16 misrepresentations to Mr. Ramchandani and because Citibank
17 didn't want the world to know that they were using their PR
18 people to advance this argument that, again, is the very same
19 argument that they were advancing before government regulators,
20 including the DOJ, what Judge Marrero called the scapegoating
21 of Mr. Ramchandani.

22 So that's the relevance of these documents and the
23 reason that we question Citibank's contention that in many,
24 many documents that they withheld involving communications with
25 Citibank, people solely related to efforts that tell -- ensure

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1 that the PR people wouldn't be speaking to the press about
2 Mr. Ramchandani.

3 THE COURT: All right. Who is going to speak on
4 behalf of Citi?

5 MR. FISHMAN: It is Marshall Fishman. Thank you, your
6 Honor.

7 There is no doubt that Citi's employees in its own PR
8 department, not an outside PR firm, unlike many of the cases,
9 such as, *Signet*, consulted with in-house lawyers to ensure that
10 public statements did not impact Citi's litigation strategy
11 regarding ongoing regulator investigations and also to comply
12 with regulator directions not to disseminate information. So
13 it was very different from hiring an outside PR firm to
14 quote/unquote burnish a company's image and run a PR strategy
15 independent of legal strategy.

16 Here, there was always a litigation purpose; ensuring
17 that public statements would have no impact on the
18 investigation by multiple regulators, including DOJ. They
19 wanted to comply with the regulators' continuing directives not
20 to disseminate information about the investigation. This is
21 akin to the situation in *Universal Standard* and unlike the
22 situation in *Signet*.

23 For these reasons, your Honor, the documents that have
24 been designated as privileged and confidential between
25 attorneys and folks, employees in the PR department are deemed

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1 to be privileged, and nothing Mr. Lurie has said seeks to
2 vitiate that privilege or in any way undercuts the claim of
3 privilege.

4 Thank you.

5 MR. LURIE: If I may, if I may just briefly?

6 THE COURT: Go ahead.

7 MR. LURIE: If it is the case that a particular
8 communication had the following purpose, right, that Citi said,
9 they each involved instruction to PR people not to disclose
10 information, right? To the extent that these communications
11 are instructions to the PR people not to disclose information
12 to the press, we are not seeking that material. I understand
13 that that would be potentially privileged, and it is certainly
14 not something that I am particularly interested in for -- from
15 a -- as a party to this case, getting an instruction from an
16 e-mail instructing PR people not to communicate to the press.
17 But simply asserting that that was -- that that was going on,
18 right, doesn't transform all of these communications into
19 privilege and it is -- this is where we have a problem that's
20 very similar to that with the employment materials. Citi's
21 articulated a potentially valid basis to withhold the
22 communications, but it's described that basis to numerous
23 communications that, even based on the limited information that
24 we have seen in the privilege log, just doesn't square with
25 their account, and it doesn't square with the activity of the

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1 PR people who were actively involved over a period of years in
2 disseminating Citi's account of facts that were under
3 investigation by the government and specifically not just
4 burnishing Citi's reputation, but tarnishing Mr. Ramchandani's
5 reputation and suggesting in no uncertain terms that he was a
6 wrongdoer to the press. To the extent the representations fit
7 into the category I just described and don't fit into the
8 narrow category that Mr. Fishman has described, then I submit
9 they should be produced.

10 THE COURT: All right. So I think that was all of the
11 buckets that were addressed in plaintiff's motion, am I right?

12 MR. LURIE: Yes, your Honor.

13 THE COURT: All right. So I am going to be putting up
14 a text-only order shortly that says the plaintiff is to send a
15 draft stipulation to the defendants by 9 a.m. tomorrow with
16 respect to the Cleary memoranda about meetings with the
17 Department of Justice and the Cleary annotated chats and by 5
18 p.m. tomorrow the parties are to file a letter to the ECF
19 docket indicating whether or not agreement has been reached.
20 Only if agreement has been reached with respect to those
21 memoranda and the annotated chats will I refrain from
22 publishing my opinion and order. Otherwise, I will publish my
23 opinion and order dealing with all of the issues.

24 If agreement has been reached with respect to the
25 Cleary memoranda -- there are also a couple of e-mails in

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1 there. When I refer to "memoranda," I am also referring to the
2 e-mails that were done in lieu of a formal memorandum.
3 Otherwise, my ruling will merely be confined to the last two
4 topics we have discussed, which are the communications
5 involving Mr. Ramchandani's termination and the communications
6 with the press department, for lack of a better term.

7 With that, I believe the parties are aware of how to
8 order a transcript using the Southern District Reporters
9 website, am I right?

10 MR. FISHMAN: Yes, your Honor.

11 THE COURT: All right. So I will leave the parties to
12 do that.

13 Do you need to stay on the line for that purpose or
14 you will just -- you will get that in by e-mail somehow?

15 MR. FISHMAN: We can do it by e-mail, your Honor.
16 This is Marshall Fishman.

17 THE COURT: Very well. This matter is adjourned.
18 Thank you.

19 COUNSEL: Thank you, your Honor.

20 THE COURT: All right. So long.

21 oOo